



5001-06-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 207, 210, and 219**

**[Docket DARS-2018-0014]**

**RIN 0750-AJ43**

**Defense Federal Acquisition Regulation Supplement:**

**Consolidation of Contract Requirements (DFARS Case 2017-D004)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove outdated coverage of consolidation of contract requirements.

**DATES:** Effective [Insert date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer D. Johnson, telephone 571-372-6100.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is amending the DFARS to remove outdated coverage of consolidation of contract requirements, which is defined at DFARS 207.170 as "the use of a solicitation to obtain offers for a single contract or multiple award contract to satisfy two or

more requirements of a department, agency, or activity for supplies or services that previously have been provided to, or performed for, that department, agency, or activity under two or more separate contracts." This coverage implemented 10 U.S.C. 2382, which was repealed by section 1671 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239). Section 1671 also amended section 44 of the Small Business Act (15 U.S.C. 657q) to remove the requirement for DoD to comply with 10 U.S.C. 2382. As a result, DoD is now required to comply with 15 U.S.C. 657q.

10 U.S.C. 2382 imposed limitations on the use of acquisition strategies involving consolidation, including requirements to identify alternative approaches that would involve a lesser degree of consolidation and to determine that consolidation is necessary and justified. Section 44 of the Small Business Act (15 U.S.C. 657q) contains similar limitations. The Federal Acquisition Regulation (FAR) addresses consolidation, including the limitations of 15 U.S.C. 657q, at FAR 7.107. By removing the outdated DFARS coverage of consolidation, this rule will reduce confusion among the DoD contracting workforce caused by differing requirements in the FAR and DFARS.

## **II. Discussion and Analysis**

This rule deletes DFARS section 207.170 in its entirety to remove the obsolete text on consolidation of contract

requirements. In addition, paragraphs (a)(i)(A) and (a)(ii)(A) of DFARS section 210.001 are also deleted to remove the reference to the deleted text at DFARS 207.170. In paragraph (c)(11)(A) of the DFARS section 219.201, the reference to deleted text at DFARS 207.107 is replaced by a reference to FAR 7.107, where contract consolidate and the limitations of 15 U.S.C. 657q are currently addressed.

### **III. Publication of This Final Rule for Public Comment Is Not Required by Statute**

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because the rule merely removes obsolete text from the DFARS, which affects only the internal operating procedures of the Government.

#### **IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

This rule does not create any new provisions or clauses nor impact any existing provisions or clauses.

#### **V. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **VI. Executive Order 13771**

This rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because the rule relates to agency organization, management, or personnel.

#### **VII. Regulatory Flexibility Act**

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

#### **VIII. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### **List of Subjects in 48 CFR Parts 207, 210, and 219**

Government procurement.

**Jennifer Lee Hawes,**

Regulatory Control Officer,

Defense Acquisition Regulations System.

Therefore, 48 CFR part 207, 210, and 219 are amended as follows:

1. The authority citation for parts 207, 210, and 219 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

#### **PART 207—ACQUISITION PLANNING**

**207.170 [Removed and Reserved]**

2. Remove and reserve section 207.170.

**207.170-1 [Removed]**

3. Remove section 207.170-1.

**207.170-2 [Removed]**

4. Remove section 207.170-2.

**207.170-3 [Removed]**

5. Remove section 207.170-3.

**PART 210—MARKET RESEARCH**

6. Amend section 210.001 by revising paragraph (a) to read as follows:

**210.001 Policy.**

(a) In addition to the requirements of FAR 10.001(a), agencies shall—

(i) Conduct market research appropriate to the circumstances before issuing a solicitation with tiered evaluation of offers (section 816 of Pub. L. 109-163); and

(ii) Use the results of market research to determine whether the criteria in FAR part 19 are met for setting aside the acquisition for small business or, for a task or delivery order, whether there are a sufficient number of qualified small business concerns available to justify limiting competition under the terms of the contract. If the contracting officer cannot determine whether the criteria are met, the contracting

officer shall include a written explanation in the contract file as to why such a determination could not be made (section 816 of Pub. L. 109-163).

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## **PART 219—SMALL BUSINESS PROGRAMS**

### **219.201 [Amended]**

7. Amend section 219.201 in paragraph (c)(11)(A) by removing “(see 207.170)” and adding “(see FAR 7.107)” in its place.

[FR Doc. 2018-07732 Filed: 4/12/2018 8:45 am; Publication Date: 4/13/2018]